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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,861	09/30/2003	Robert Jarvik	100041-41188	6276
7590	07/14/2006		EXAMINER	
Robert Jarvik C/O Jarvik Heart Inc. 333 West 52nd Street New York, NY 10019				WILLSE, DAVID H
			ART UNIT	PAPER NUMBER
			3738	

DATE MAILED: 07/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/674,861	JARVIK, ROBERT	
	<b>Examiner</b>	<b>Art Unit</b>	
	Dave Willse	3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 20 April 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-6 is/are pending in the application.
  - 4a) Of the above claim(s) 4-6 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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Claims 4-6 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 20, 2006.

The abstract of the disclosure is objected to because it is too long. Reference is made to MPEP § 608.01(b).

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet **within the range of 50 to 150 words**. It is important that the abstract **not exceed 150 words in length** since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The specification is objected to because of the following informalities: On page 8, line 20, "product" should be replaced by --produce--. On page 9, line 4, "56," should be replaced by **--56-- or --, 56-- (bold font style)**. Appropriate correction is required. The Applicant's attention is directed to 37 CFR 1.121, which sets forth the manner of making amendments.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 1 and 3, line 1 of each, the term "mode" is somewhat confusing; the components positively set forth in the body of each claim are elements of a control system, so the word "mode" should be deleted so as to render the preamble and the body of each claim consistent with one another. In claim 1, line 2, "its inflow" should be replaced by --an inflow--

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in order to provide a proper antecedent basis for the term; likewise, “its outflow” lacks a proper antecedent basis. Words appearing in the middle of a claim should *not* be capitalized (e.g., in claim 1, line 4, “An” should be replaced by --an--). In claim 1, line 8, “which” should be replaced by --, said circuit-- in order to improve the clarity; on line 11, either “the speed of” or “run” should be deleted. Other errors were noted, and the Applicant should attempt to correct all errors, but the examiner will provide assistance if requested.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagyszalancy et al., US 6,048,363, which discloses an electronic brushless DC motor speed control system (column 3, lines 11-24; column 9, lines 50-55; etc.), a speed control knob 172 (Figure 16), and a speed variation circuit capable of generating a cyclical output (column 4, lines 38-42; column 13, lines 26-43; column 15, lines 10-22; etc.). Regarding claim 3, the patent is silent about the particular increments of the potentiometer 172; however, increments of approximately 5% of the maximum speed would have been obvious to the ordinary practitioner in order to provide a patient with adequate control over various activities (column 13, lines 35-37) and yet remain “within safe limits” (column 13, line 33). Regarding claim 1, minimal flow of approximately 5 to 20 seconds duration at least once an hour would likewise have been obvious to one of ordinary skill in view of the method of controlling the speed for *periodically* changing the blood pressure (column 4, lines 37-42): “[t]he pulse frequency may be lower” than

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that of normal heart function (column 19, lines 14-16) so that a duration of 5 to 20 seconds *between* pulses would have been obvious from the emphasis on maintaining a *limited* change in pressure (column 19, lines 16-17; column 1, lines 5-9; etc.), with minimal forward flow during diastole having been obvious, if not inherent, from the use of input pressure sensors (column 3, lines 52-53) and from the intent to “allow the patient to regain cardiac health” (column 20, lines 14-15). Regarding claim 2, calibration devices would have been obvious in order to achieve the appropriate flow rate (column 13, lines 51-53) regardless of whether the aforementioned periodic pulsing mode is activated (column 19, lines 8-11).

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US 4,957,504 discloses an electronic brushless dc motor speed control system **44** (column 3, line 50 et seq.), an adjustable speed setting device **62** (column 4, lines 26-28; column 5, lines 6-9 and 15-17; column 6, lines 58-60), and a speed variation circuit (column 4, line 29 et seq.; column 5, line 65 et seq.).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Willse whose telephone number is 571-272-4762. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Dave Willse  
Primary Examiner  
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